

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

WP(C).No. 25282 of 2007(I)

PETITIONER:

SIVADAS P.K.,
PALARA HOUSE, EZHACHERY P.O., KOTTAYAM.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

RESPONDENTS:

1. THE DISTRICT MAGISTRATE, KOTTAYAM.
2. KADANAD GRAMA PANCHAYAT, KADANAD P.O.,
KOTTAYAM 686 653, REPRESENTED BY ITS SECRETARY.
3. THE SECRETARY,
KADANAD GRAMA PANCHAYAT,
KADANAD P.O., KOTTAYAM 686 653.

R1 BY GOVT. PLEADER MR.K.J.MOHAMMED ANZAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX(WPC 25282/07)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF ORDER NO.A4.574/07 DATED 13.8.2007 ISSUED BY THE THIRD RESPONDENT.

EXT.P2: TRUE COPY OF THE ORDER NO.M2. 31582/07 ISSUED BY THE 1ST RESPONDENT DATED 7.8.2007.

PIUS C. KURIAKOSE,J.

W.P.(C) No.25282 of 2007

Dated: 10th September, 2007

JUDGMENT

Ext.P1 order issued by the Kadanad Grama Panchayat cancelling the licence which had been issued by the Panchayat to the petitioner for conducting his hotel by name 'Hotel Honey' as well as Ext.P2 order of the District Magistrate, Kottayam directing the Panchayat to cancel the licence issued to the petitioner are under challenge. Even though respondents 2 and 3, the Panchayat and the Secretary were served with notice, they have not come forward to resist the prayers in this Writ Petition which seek quashment of Exts.P1 and P2. The learned Government Pleader appearing for the 1st respondent submits that Ext.P1 has been passed only on the basis of Ext.P2 and the petitioner has statutory remedies against Ext.P1. Without availing those remedies, it is not open to the petitioner to challenge Ext.P1 in this proceeding under Article 226 of the Constitution. It is not disputed before me that Ext.P2 order was passed by the District Magistrate without hearing the petitioner. It is also not known whether any final report has been submitted to court on the basis of the investigation conducted into the crime, the F.I.R. in respect of which was submitted to the Judicial First Class

Magistrate Court, Pala as indicated in Ext.P2. Ext.P2 is thus violative of principles of natural justice. I set aside Ext.P2 on that reason. Since Ext.P1 is in the nature of an order consequential to Ext.P2, Ext.P1 also has to be set aside. The District Magistrate, Kottayam is directed to take a fresh decision as to whether any direction should be issued to the Panchayat for cancelling the licence given to the petitioner. It is open to the petitioner to urge before the District Magistrate that he is not guilty of the offences alleged against him in the F.I.R. submitted to the Magistrate Court. It is also open to the petitioner to urge before the District Magistrate that it will be beyond the jurisdiction of the District Magistrate to issue directions in the nature seen issued under Ext.P2 to the Panchayat. The District Magistrate will pass fresh orders after hearing the petitioner at the earliest and at any rate within two months of the petitioner producing a copy of this judgment. Similarly, Ext.P1 which as already indicated is in the nature of an order consequential to Ext.P2 is also passed without hearing the petitioner. The learned Government Pleader submits that irrespective of whether the petitioner has been convicted of any offence under the Abkari Act, the petitioner is bound to abide by the terms of the licence. The licence issued to the petitioner was

only for conducting the hotel and not for selling liquor. Opportunity need not be given to the petitioner before initiating appropriate action against the petitioner if he has violated the terms of the licence which had been given to him. I find some merit in the above submission of the learned Government Pleader. However, I set aside Ext.P1 also since Ext.P1 is issued on the basis of Ext.P2 only. The Panchayat will hear the petitioner and take a fresh decision at the earliest and at any rate within three months of receiving a copy of this judgment. In the meanwhile, it is made clear that the petitioner will have the liberty of conducting 'Hotel Honey' strictly in accordance with the terms of the licence which is seen cancelled as per Ext.P1. If it is noticed that those conditions are violated by the petitioner, this judgment will not stand in the way of the Panchayat initiating fresh proceedings.

The Writ Petition is disposed of as above. No costs.

srd

PIUS C.KURIAKOSE, JUDGE